

Presentation about the institutional aspects of the draft Biodiversity Conservation Strategy

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I am now (back) at the EDO and therefore still interested in all aspects of environmental law reform, but biodiversity law reform is a particular interest since my previous paid NGO role was as the Conservation Council's Biodiversity Officer. A key focus of that role was to push for the BC Act and BC Strategy, but a campaign without either a 'location' or the capacity to focus on a particular icon species was challenging to run; at best our lobbying efforts (including seminars, email actions and about 10,000 postcards) succeeded only in keeping those reforms on the agenda.

Put simply, these 2001 Gallop Govt promises have languished and must be finalized very soon, obviously before the State Govt changes but preferably also before the "pre-poll conservatism" that is likely to characterise 2008.

Structural issues are not necessarily legislative ones, but that will be my emphasis for today, being of the strong view that policies without either strong political or strong legal backing are often just window dressing, and it is fair to say that biodiversity conservation does not have strong day to day political support in the middle of a mining boom.

Key aspects of the Govt's proposed BC Act have always been:

- incorporating significantly higher penalties for killing or detrimentally disturbing native biota;
- listing Threatened Ecological Communities (TECs);
- listing threatening processes; and
- allowing for the creation of bioregional plans (although it's never been clear how useful they might be).

Key things the conservation sector has been seeking to find in a BC Act for some years have been:

- the reduction or elimination of the 'direct' role of the Dept of Fisheries in marine biodiversity conservation, on the grounds of conflict of interest;
- allowing community groups to take actions for breaches of the Act in court on the same basis as DEC, for those occasional (☺) times they can't be persuaded to enforce the legislation themselves; and
- the creation of a new Biodiversity Commission as an "enhanced merger" of the Conservation Commission and the Marine Parks and Reserves Authority (i.e. with significant new resources as well as structural and cultural independence from DEC).

In recent months the conservation sector has taken a new tack in this process; we have stopped waiting for the draft BC Bill to come from Govt and have instead sought to advance our model for reform suggesting drafting instructions to Govt. That move also involved some revising and refining of our position.

An overview of the key aspects of our drafting instructions, which were presented to Minister McGowan on 10 November 2006 is:

- the Biodiversity Commission would be tasked with reviewing the Biodiversity Strategy every 5 years;
- the Biodiversity Commission would prepare and review Regional Biodiversity Plans (RBPs) on a 5 yearly basis, which plans would be consistent with the Biodiversity Strategy;
- all biodiversity use would have to be consistent with those RBPs, but existing permitting processes would still be the 'face' of the process so that in the vast majority of cases no new permits would be required;
- the overriding goal for each RBP would be to ensure that there are viable populations of all native species in that region, and that associated habitats, ecosystems and natural processes in that region are conserved, protected and restored; and
- a key element of each RBP would be to identify specific species, populations, communities, habitats or ecosystems which need specific consideration or management priority.

Our proposals can be further summarized as such:

1. biodiversity conservation should be about maintaining and recovering viable populations, not just extending the current emphasis on threatened species to encompass TECs; and
2. plans to deal with biodiversity conservation should be binding on all decision-makers, not just “relevant considerations” at law.

We had been seeking a briefing about the above with Minister McRae but will now of course need to wait and see who replaces him. Please contact me on cpoustie@edowa.org.au for a full copy of these legislative reform proposals.

So how does the draft BCS stand up against the current conservation sector model?

1. The draft is to be commended for seeking to make biodiversity conservation fundamental in decision making, as well as better coordinated, but without the necessary legal drafting such commitments are purely rhetorical;
2. It is heartening to see the commitment to proclaim the BC Act by 2008, but apart from the number of previous deadlines that have been missed it is not entirely clear how desperately we will need the BC Act until we see even a draft BC Bill;
3. It is good to see that bioregional plans are still contemplated, but, again, whether or not they are of real value depends on their legal status and how they are drafted;
4. Ditto for the proposed local govt action plans;
5. We await the detail of the proposed marine planning framework before such a reform can be compared to long-standing conservation sector recommendations;
6. I should perhaps again await the details for the proposed State agency corporate plans for biodiversity conservation, but I can already say that I would be surprised if they meaningfully resolved the tough choices such as should a particular development go ahead or should a particular proposed National Park finally be gazetted.

7. I'd love to comment on proposed primary action 81, but I don't think it's at all clear what it means!

Broader points about the draft BCS:

While I have your attention, I'd like to take the opportunity to make some additional comments about the draft BCS as a whole, and the process that led to it's current iteration:

- the State Govt released new Biodiversity Conservation Initiative funds late last year (\$15m over two years), at the same time as this draft, so our comments about the draft will potentially have little impact because even if DEC accepts new suggestions they may not attract new resources from Treasury;
- the strategy still reads like a DEC document (for example with no mention of the DEC activities which are arguably the cause of environmental damage, such as prescribed burning), which was a comment made by the sector in response to the discussion paper preceding this draft; and
- the strategy still downplays the potential for good conservation outcomes from the NRM process see pp 15 and 43; the latter for example says a lead agency for ensuring that NRM groups deliver on biodiversity outcomes has yet to be identified!), which was the sector's feedback about the discussion paper too.